

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

THOMAS W. SHAW §  
v. § CIVIL ACTION NO. 6:07cv428  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Thomas Shaw, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of the procedures used in the revocation of his parole. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report on September 13, 2007, recommending that the petition be dismissed. The Magistrate Judge observed that this is the fourth federal habeas corpus petition which Shaw has filed concerning the same revocation of parole. The Magistrate Judge noted that Shaw did not allege, much less show, that he has received permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3). Furthermore, the on-line records of the Fifth Circuit do not show that Shaw has sought or received such permission. The Magistrate Judge concluded that until Shaw receives permission to file a successive petition, the district court lacks jurisdiction to consider the claims raised in such a petition. Crone v. Cockrell, 324 F.3d 833, 838 (5th Cir. 2003). The Magistrate Judge further recommended that Shaw be denied a certificate of appealability *sua sponte*.

Shaw received a copy of the Magistrate Judge's Report on September 24, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED without prejudice, with refiling conditioned upon receipt of permission from the Fifth Circuit to file a successive petition. It is further

ORDERED that the Petitioner Thomas Shaw is hereby DENIED a certificate of appealability *sua sponte*, which such denial having no effect upon his right to seek leave from the Fifth Circuit Court of Appeals to file a successive petition. Finally, it is

ORDERED that any and all other motions which may be pending in this action are hereby DENIED.

**So ORDERED and SIGNED this 18th day of October, 2007.**

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized "L" on the left and a "D" on the right.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**